

WP(C) 4549/2004

BEFORE

THE HON'BLE MR JUSTICE B K SHARMA

IN THE GAUHATI HIGH COURT

THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH

WP(C) No. 4549/2004

Smti Subarna Tamuli,

D/o Late Lalit Tamuli, Village-Meragarh, P.O. Bongaon, Dist.-Jorhat, Assam.
& Petitioner

- Vs -

1. The State of Assam, represented by the Commissioner and Secretary to the Govt. of Assam, Education Department, Dispur, Guwahati-6.
2. The Secretary to the Govt. of Assam, Education Department, Dispur, Guwahati-6.
3. The Director of Secondary Education, Assam, Kahilipara, Guwahati-19.
4. The Inspector of Schools, Jorhat District Circle, Majuli, Dist.-Jorhat, Assam.
5. The Principal, Meragarh Narayan Dev higher Secondary School, Majuli, Jorhat, Assam.
6. Sri Pradip Saikia, S/o Sri Sonaram Saikia, Village Majuli Mudoigaon, P.O. Bongaon, Dist.-Jorhat, Assam.
& Respondents

BEFORE

THE HONBLE MR. JUSTICE B.K. SHARMA

For the Petitioner: Mr. B. Buragohain,
Ms. A. Das,
Mrs. P. Borah
Mr. PK Gogoi, Advocates

For the Respondents: Ms. M. Gogoi, SC, Education.

Dates of hearing : 19.12.2006

Date of Judgment and Order:

JUDGMENT AND ORDER

This writ petition has been filed praying for a direction to the respondents to appoint the petitioner as Lower Division Assistant (LDA) in the school in question. Such a prayer has been made on the basis of the selection of the petitioner for one of the two posts advertised.

2. The petitioner was first appointed in the school namely Meragarh Narayan Dev Higher Secondary School, Majuli by Annexure-1 order dated 8.12.1981 issued by the Inspector of Schools, Jorhat District Circle, Jorhat. Such appointment was against a leave vacancy. He worked against the vacancy upto 30.11.1982. In 1992 (8.10.1992), one Sri Pradip Saikia (respondent No. 6), was allowed to act as LDA on honourary basis subject to approval by the Development Committee of the Sc

hool and the Government. The matter relating to appointment of said Sri Saikia came up for discussion before the Development Committee in its meeting held on 2.1.1993 and in the meeting it was resolved to cancel the appointment and accordingly, said Sri Saikia was intimated by letter dated 6.1.1993.

3. After the aforesaid cancellation of appointment of the respondent No. 6 the petitioner was asked to work as Typist in the school as and when occasion for engagement arose. In the meantime, the school authority sent a proposal to the government for sanctioning a post of LDA. A sanctioned post of 1991 was allotted to the school in 1994. After such allotment of the post, the petitioner was allowed to work against the same. He was formally appointed by order dated 5.2.1994 limiting the same for three months. While he was continuing as such, his service was terminated and in his place the respondent No. 6 was appointed by order dated 14.2.1995 and the same was stated to be pursuant to the order dated 8.1.1995 passed by this Court in the writ petition being Civil Rule No. 99/1994 filed by the respondent No. 6.

4. Being aggrieved by the aforesaid order of this Court, the present petitioner preferred review application No. 43/1996 and the same was disposed of by order dated 1.9.1998 providing consideration of appointment for the post of LDA following the procedure prescribed by the rules. It was provided that it would be open for both the petitioner and the respondent No. 6 to apply for the post. With the passing of the order on the review petition, the order passed in the writ petition got rescinded. According to the petitioner in spite of the said order on review the respondents allowed the respondent No. 6 to continue in his service and in fact he had been upgraded to the post of UDA. It is the further grievance of the petitioner that contrary to the direction contained in the said order on review, the respondents although have conducted interview for two posts of LDA and in spite of the selection of the petitioner have not taken steps for his appointment. The selection was conducted on 9.12.1999 and both the respondent No. 6 and the petitioner were selected. Their respective merit positions are serial No. 1 and 2. The advertisement was for two vacancies and the same was issued on 25.1.1999.

5. In the aforesaid fact situation, the petitioner preferred writ petition being WP(C) No. 6550/2001 and the same was disposed of by order dated 25.4.2003 directing the respondents that if the select list in question was valid and operative and the authority was inclined to act on the basis of the select list, the case of the petitioner be considered as per the merit list against any such vacancy that may be available in the school.

6. The grievance raised in the instant writ petition is that, in spite of the aforesaid direction of this Court, the respondents have been dilly-dallying with the matter and in the process the petitioner has been made to suffer. As per the said order of this Court, necessary order was to follow within two months from the date of receipt of the certified copy of the order. By Annexure-10 communication dated 1.8.2001, the Principal of the School requested the Director of Secondary Education, Assam to take necessary action in the matter towards filling up of the vacant post of LDA. By Annexure-11 communication dated 28.7.2003, the Inspector of Schools, Jorhat intimated the Director about holding of the selection in 1999 and preparation of the select list. Thereafter by Annexure-12 communication dated 26.8.2003, the Director had intimated the Secretary to the Government of Assam in the Education Department that the post of LDA was lying vacant due to up gradation of the existing LDA to that of UDA. By the said communication, he asked for necessary approval of the Government for appointment of the petitioner.

7. After the aforesaid developments, the Secretary to the Government of Assam in the Education (E&S) Department passed the impugned order dated 15.5.2004. The order has been passed purportedly in compliance of the aforesaid order dated

25.4.2003 passed in WP(C) No. 6550/2003. A bare perusal of the order will go to show that the Secretary has not answered the issue involved, but has only stated that the case of the petitioner would be considered, if she applies for the post and takes part in the selection process. In the order, nothing has been stated about the selection already conducted and the fact that the petitioner is a selected candidate.

8. Although the writ petition is pending for the last more than two years after its entertainment, neither the official respondents nor the private respondent has shown any response by filing any counter affidavit or furnishing any instruction to the learned Standing Counsel, Education Department.

9. I have heard Mr. B. Buragohain, learned counsel for the petitioner as well as Ms. M. Gogoi, learned Standing Counsel, Education Department. I have also perused the materials on record. The position, which has emerged is that while the respondent No. 6 has been accommodated first as LDA and thereafter upgrading him as UDA, the petitioner in spite of his selection against two posts of LDA has not been so accommodated. The Director of Secondary Education, Assam by his aforesaid communication dated 26.8.2003 sought for approval of the Government for appointment of the petitioner against one of the vacancies. In the impugned order dated 15.5.2004, no reason has been assigned as to why the select list could not be acted upon. There is no dispute that two posts of LDA were advertised and selection was also held for the same. While the petitioner occupied merit position No. 2, the respondent No. 6 occupied the merit position No. 1 and thus in the normal course both of them ought to have been accommodated against the two vacancies. While the respondent No. 6 has been accommodated, the respondents have not taken any action to accommodate the petitioner.

10. The impugned order dated 15.5.2004 has been noticed above. There is nothing substantial in it. Except referring to the factual aspects of the matter and the orders passed by this Court, nothing has been stated as to why the petitioner could not be appointed. In the order, it has not been disputed that the petitioner was selected for appointment against a vacant post. While it is true that mere selection of a candidate does not confer on him the indefeasible right for appointment, but at the same time, the respondents also cannot act arbitrarily so as to deprive the selected candidate of his legitimate right of appointment pursuant to selection. In the instant case, this Court by its order on review as well as the order passed in WP(C) No. 6550/2001 provided for consideration the case of both the incumbents. While the respondent No. 6 has been appointed and even upgraded, the petitioner is still running from pillar to post to get his due by way of appointment. The respondents as such, as evident from the impugned order dated 15.5.2004 have assigned any reason, as to why the petitioner could not be appointed.

11. In the above context, the observation of the Apex Court in the case of R S Mittal Vs. Union of India reported in 1995 Supp (2) SCC 230 may be noted:

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Ce

ntral Government's approach in this case was wholly unjustified.

12. When the fact of availability of vacancy and the selection of the petitioner within the zone of consideration, is not in dispute and the impugned order does not stand to reason, there is no escape from the liability and responsibility on the respondents to appoint the petitioner against the vacant post of LDA in the school. Accordingly, the direction is issued for appointment of the petitioner against the vacant post of LDA in Meragarh Narayan Dev Higher Secondary School, Majuli. This shall be done within 28th February, 2007. Whatever formalities required to be observed in this regard in association with any other Departments, which might be involved, shall be so carried out within this stipulated period and the said Departments shall also do the needful in this regard within the said stipulated period.

13. Writ petition is allowed, without, however, any order as to costs.